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April 2, 2018

**By first class mail and ECF**

Hon. John T. Copenhaver, Jr.  
6009 Robert C. Byrd United States Courthouse  
300 Virginia Street East  
Charleston, WV 25301

Re: United States v. Bayer CropScience LP, No. 2:15-cv-13331  
March 28, 2018 Status report on Expiration of Equipment Bids  
for Appendices B-1, B-2 of Notice of Second Modification (ECF 25-1)

Dear Judge Copenhaver,

As suggested by this Court's clerk during a March 28, 2018 conference call between the parties to the above referenced matter and proposed intervenors, Bayer CropScience LP ("BCS"), respectfully submits this status report on the expiration of the equipment bids for proposed substitute supplemental environmental projects (SEPs), Appendices B-1 and B-2, (the "Alternative SEPs") attached to the Notice of Lodging of the Second Modification to the Consent Decree (ECF #25-1).

**Background**

In accordance with the Consent Decree, BCS had agreed to perform a SEP involving the expansion of the West Sump to provide additional storage capacity to prevent untreated process wastewater from overflowing into the Kanawha River during heavy rain events, fire-fighting emergencies and process upsets (the "West Sump Expansion SEP"). Between the lodging of the agreement on this SEP and the Court's approval of the Consent Decree, BCS made modifications to the West Sump that have substantially reduced or eliminated overflows of untreated wastewater, and provided the government with evidence demonstrating that no overflows had occurred since late 2013. Additionally, BCS encountered soil contamination during the initial stage of construction that threatened the health and safety of construction workers along with other conditions that significantly complicated the construction activities. BCS reported the conditions to the site owner, Dow, who in turn reported the contamination to the United States Environmental Protection Agency ("EPA").

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BCS proposed substituting the Alternative SEPs for the West Sump Expansion SEP. The government approved and accepted both the cancellation of the West Sump Expansion SEP and the Alternative SEPs. The Alternative SEPs better advance the objectives of chemical accident prevention laws that form the underlying basis of this enforcement action.

The Consent Decree states that the Parties may modify the Consent Decree only upon a written agreement signed by the Parties, and that material changes are effective only upon approval by the Court (ECF #19 ¶ 84). The government filed a Second Modification to the Consent Decree agreeing to delete paragraph 23.a. of the Consent Decree and replace it in its entirety with the following:

*The Volunteer Fire Department ("VFD") Equipment SEPs (Appendices B-1 and B-2) will enhance the ability and capability of emergency responders to address releases and respond to chemical emergencies in Kanawha County by providing to the Jefferson Volunteer Fire Department and Institute Volunteer Fire Department: fire trucks; modern specialized chemical fire-fighting equipment; base and mobile radios; and individual air packs with thermal imaging cameras built in.*

#### Notice to the Court

BCS hereby advises the Court that it has become necessary to re-bid the equipment to be donated to the VFDs, as the existing bids have expired. In order for BCS to purchase and donate equipment to the VFDs, they must establish the existence of the equipment, or arrange for its manufacture, according to current 2018 specifications. Thereafter, BCS must bid on the equipment, which, if stocked, a vendor can hold for 30 days. If the equipment is not in stock, the equipment must be manufactured. A bid is typically good for three to four months. As the specialized fire-fighting equipment must conform to 2018 standards, BCS has learned that the equipment costs will increase, in particular with respect to the fire trucks, by approximately \$4,000 (\$2,000 for each truck), and likely more for other items.

This writing shall constitute notice to this Court that the fire departments' desire for the specialized fire-fighting equipment is unchanged, that BCS is in the process of requesting new equipment bids, that BCS remains willing to perform the modified SEPs, and thus, BCS is not opposing the modification, nor seeking to modify the SEPs again. Accordingly, nothing about this status report should prevent the Court from entering the Second Modification. BCS will notify the Court of any further development.

Respectfully,

  
Eileen D. Millett

EDM/deh

cc: Chintan Amin, Bayer U.S., Sr. Counsel  
Caroline Belk, Bayer U.S., Sr. Counsel